Supreme Court of the United States

October Term, 1942

No. 191

ALBERT F. COYLE
Petitioner

v.

THE PEOPLE OF THE STATE OF NEW YORK
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL SESSIONS OF THE CITY OF NEW YORK

RESPONDENT'S BRIEF

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DAVID RIESMAN
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Of Counsel

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Opinion Below

The petitioner was convicted in the Court of Special Sessions, New York County. The judgment was affirmed by the Appellate Division of the Supreme Court of the State of New York, First Department, on February 6, 1942 (263 App. Div. 937), and by the Court of Appeals of New York State, on December 3, 1942 (289 N. Y. 169), in both instances without opinion. A motion for reargument in the Court of Appeals was denied on April 23, 1943, also without opinion.

Jurisdiction

Jurisdiction is invoked under sections 237 (b) and 240 (a) of the Judicial Code, but no grounds stated in Rule 38, subdivision 5, of this Court are presented by the petition or otherwise appear in the case.

Questions Presented

The petitioner urges (1) that the activities for which he was convicted lay outside the jurisdiction of New York State and wholly in the federal jurisdiction; (2) that the information was defective and that consequently he did not receive a fair trial; and (3) that he was denied a jury trial.

The Statute

Section 270 of the Penal Law, so far as here pertinent, reads:

> **"Practicing or appearing as attorney without being admitted and registered.**
>
> "It shall be unlawful for any natural person to practice or appear as an attorney-at-law or as attorney and counselor-at-law for a person other than himself in a court of record in this state or in any court in the city of New York, or to furnish attorneys or counsel or an attorney and counsel to render legal services, or to hold himself out to the public as being entitled to practice law as aforesaid, or in any other manner, or to assume to be an attorney or counselor-at-law, or to assume, use, or advertise the title of lawyer, or attorney and counselor-at-law, or attorney-at-law or counselor-at-law, or attorney, or counselor, or attorney and counsellor, or equivalent terms in any language, in such manner as to convey the impression that he is a legal practitioner of law or in any manner to advertise that he either alone or together with any other persons or person has, owns, conducts or maintains a law office or law and collection office, or office of any kind for the practice of law, without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state, and without having taken the constitutional oath and without having subscribed and taken the oath or affirmation required by section four hundred and sixty-eight of the judiciary law and filed the same in the office of the clerk of the court of appeals as required by said section."

Statement

A Grand Jury drawn for the Court of General Sessions of the County of New York directed the District Attorney of that county to file an information in the Court of Special Sessions of the City of New York against the petitioner, Albert F. Coyle, for the crime of practicing as an attorney without being admitted and registered (Penal Law, § 270), a misdeameanor. He was convicted by that Court and the resulting conviction was unanimously affirmed by the Appellate Division and by the Court of Appeals, in both instances without opinion, and a motion for reargument in the Court of Appeals was denied.

It is not necessary to examine petitioner's claims at length upon the merits. Since, however, his petition for certiorari, and his brief in support thereof, give a misleading impression of the activities for which he was convicted, it is necessary to refer briefly to the evidence adduced at the trial which demonstrated that the petitioner was not licensed to practice law in New York State or in any other jurisdiction, but that he nevertheless held himself out as a lawyer, represented a large number of persons, and rendered a variety of ordinary legal services.

For almost ten years prior to the trial, Coyle had his offices, and was associated, with attorneys (502-3, 531-2, 713, 725).* From 1937 on, he maintained his own office, where he employed lawyers and law school graduates, and handled a variety of legal business (502-3, 534-7, 725-8). On the corridor door appeared his legend (77, 85, 180, 290, 334):

> "Albert F. Coyle
> International Law"

Moreover, he was listed in the "Red Book" or classified telephone directory under the classification of "Lawyers" (395-6, Peo's Exh. 12).

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* References are to folios of the printed record.

Further, in dealing with those whom he termed his "clients", with members of the Bar, and with others, he represented himself—or permitted himself to be addressed—as a "lawyer"; for instance, he told the witness Auerbach—an inspector of the Department of Labor—that he was "an American lawyer" and that he was "practicing in New York" (80). The record is replete with similar instances (100-1, 118-23, 133-6, 200-1, 342).

On a number of occasions the petitioner wrote letters conveying the unmistakable implication that he was a lawyer; his "International Law" letterhead, his repeated references to his "clients", his formal demands for satisfaction, his threats to file suit—these were capable of no other interpretation (Peo's Exhs. 6, 7, 10, 15).

The petitioner, according to his own trial testimony, specialized in handling immigration and naturalization cases before the Labor, Justice and State Departments, and in "international law" cases involving representation of creditors of foreign concerns, "proxy marriage", and like matters (515, 675-7, 679-82, 683-4, 866-7; see, also, Peo's Exh. 21).

ARGUMENT

I

No federal question was presented

Not one of the issues here raised was presented as a federal question at the trial, or in the voluminous briefs filed in the appellate courts. Nor has there been any attempt to have the Court of Appeals amend its remittitur to show that an inescapable federal question was presented to and passed upon by that court. [See, *e. g., Lynch* v. *New York* (1934) 293 U. S. 52, 54-55.]

II

The petitioner's claim that his practice was confined to appearances before federal departments

The petitioner, ignoring a series of proven incidents of typical legal work—the pressing of a client's claim for damage to a suit of clothes (Peo's Exhs. 6, 7), attempts to collect a judgment for another client (1085-7), the incorporation of a New York corporation (217-8, 239-40, 1073; Peo's Exh. 5), and like matters (744-50, 803, 834-5)—seeks to convey the misleading impression that he was convicted for practicing solely before federal departments in immigration and naturalization cases. The record shows that the People did not rely upon these activities as a part of their case—even though, as carried on by him, they would have fallen within the prohibitions of section 270 of the Penal Law.[1]

Thus, it is obvious that no question is presented on this record concerning the privilege of a person not hold-

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1. That the petitioner's privilege of appearing before immigration and naturalization bureaus—a privilege extended to anyone not proven to be of bad moral character (see Rules of Immigration and Naturalization Service, Rule 28, subdivision A, Par 1)—did not justify petitioner in holding himself out as a lawyer—even as an "international lawyer"—is assumed by that same rule, which provides (Par. 1):

> "It shall be requisite to the admission of attorneys or counsellors to practice before the Department or any immigration station or office that they shall be attorneys in good standing in the courts of the State, Territory, or insular possession to which they respectively belong."

Moreover, it needs no argument here that the right to practice law within the confines of a state, even before federal departments, requires membership, if not in the Bar of that state, at least in the Bar of some state, and, indeed, the petitioner's counsel on this application refers to the fact that he is a member of the Bar of the State of New York as well as of that of this Court. (See Revised Rules of the Supreme Court of the United States, Rule 2, subdivision 1.)

ing himself out as a lawyer to represent citizens of a state before federal departments in accordance with the rules of the latter.

Beyond that, the issue here urged was posed below solely as one of the interpretation of the scope—as a matter of state law—of section 270 of the Penal Law.

III

The petitioner's claim that he was denied a bill of particulars and a jury trial

The petitioner contends that he was denied a fair trial because of the failure to furnish him a bill of particulars and because of the refusal to give him a jury trial. Both contentions, not presented as federal questions in any stage of the litigation, are wholly without merit.

A. The information was sufficient

The petitioner claims that he was brought to trial upon an information so gravely deficient in specificity as, in the absence of a bill of particulars, to violate his constitutional rights. The information charged that (23):

> "The defendant, from in or about the month of January, 1938, continuously, and at all times to in or about the month of November, 1940, in the County of New York, held himself out to the public as being entitled to practice law * * *."

It will be apparent that the information adequately notified the defendant "of the nature and character of the crime charged." [See *People* v. *Williams* (1926) 243 N. Y. 162, 165.] The question of the sufficiency of the information was the principal legal point raised upon the appeal—solely as a matter of state law (see Petitioner's Court of Appeals brief, Point I, pp. 5-28).

B. No jury trial was required

That the denial of a jury trial by a state presents no federal question also needs no argument here. [See, *e.g., Walker* v. *Sauvinet* (1875) 92 U. S. 90; *Palko* v. *Connecticut* (1937) 302 U. S. 319, 324; *Hurtado* v. *California* (1884) 110 U. S. 516.] The petitioner's apparent claim that he was deprived of the right to a trial by jury conferred by Article 1, Section 2 of the New York *State* Constitution—a contention of course entirely without merit in misdemeanor cases [see *People ex rel. Frank* v. *McCann* (1930) 253 N. Y. 221, 225-227]—likewise presents no *federal* question. Here also, of course, no federal question was raised at any stage of the trial.

Conclusion

It is plain that the petitioner seeks merely to reargue at this Bar the issues of fact and of state law already decided adversely to him. In seeking to do so he has attempted to give this Court an utterly erroneous impression of the record and to present, as a feeble afterthought, a number of fanciful federal questions never previously raised.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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June, 1943.